

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 312 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

LALITCHANDRA PRABHUDAS

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA for Petitioners

MR MA BUKHARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/01/97

ORAL JUDGEMENT

1. This Criminal Revision Application under section 397 of the Code of Criminal Procedure is directed against the order of the learned Additional Sessions Judge, Bhavnagar dated June 19, 1996, whereby the learned Judge allowed the Revision Application No.29/95 preferred by the State Government and set aside the order of the learned Judicial Magistrate First Class - Bhavnagar in Criminal Case No.3105/79 so far as it relates to order of

discharge of the present petitioner is concerned for the offence punishable u/s 420, 406, 477, 465, 468, 471 r/w 34/114 - I.P.C.

2. The brief facts giving rise to the present Revision Application are that, on 7/7/1977, the complainant - nonapplicant No.2 - Mansukhlal Devjibhai Rathod filed a complaint in the Court of the Judicial Magistrate First Class - Bhavnagar stating inter alia that the 11 accused persons named therein were the employees of the Public Works Department (P.W.D.). They were running Public Works Department Employees Cooperative Housing Society (hereinafter referred to as 'the Society') and the same was registered in the office of the Registrar bearing registration No. GH-2303 dated 4/12/1965. The complainant, at the relevant time, was the Secretary of the said Society whereas the original accused No.3 Himmatlal Jagjivandas Shah (since deceased) was the President of the Society. It is alleged that, prior to July 1977, the accused No.1 - Virbhadrasinghji Kumarsinghji Gohil and his Administrative Committee had sold out the land of Nilamvadi survey No.258 to one Adarsh Co-op. Society and the said land was also sold to PWD Employees Society for the purpose of selling plots to the members accused persons. It is also alleged that they had collected money from the members of the Society and by creating false records and documents, the accused persons had cheated the members.

3. The learned Magistrate passed an order directing the police for the investigation of the complaint u/s 156(3) of the Cr.P.C.. After investigation, the police filed a chargesheet against all the accused persons for offence u/s 420, 406, 477, 465, 468, 471 r/w 34/114 IPC.

4. In the year 1993, vide exh. 27, the petitioner submitted an application stating that they may be discharged as there is no material against them and the complaint has been filed with ulterior motive. This application which was filed in the year 1983 came to be decided after 12 years. The learned Magistrate by the order dated 7.2.1995, having arrived at the conclusion that there is no material against the accused persons to proceed with the trial and discharged them. The learned Magistrate found that main dispute was with regard to the management and administration and the complainant had filed civil suits and therefore, the dispute was essentially of a civil nature, which is evident from various documents exh. 68 to 73. The learned Magistrate also found that the society had gone into liquidation and therefore, only the liquidator of the society on behalf

of the society can could institute any legal proceedings in accordance with the law. The learned Magistrate also found that the documents pertaining to five plots have been cancelled vide exh.78 dated 27/6/79. The documents exh.73 were made by accused No.1 Himmatlal Jagjivandas and the Secretary was the complainant Mansukhlal Bhikhabhai Rathod. It was also noticed that Himmatlal Jagjivandas has expired. There is no evidence to say that the accused No.2 to 5 have promised to allot plots and accepted the amount and thereby, committed the offence of cheating or breach of trust. The learned Magistrate also found that the registration of the society was cancelled and the liquidation order exh. 77 had become final. The learned Magistrate expressed the firm view that neither the matter is of civil nature and no useful purpose was going to be served to proceed with the trial in a stale complaint, which was filed 18 years back i.e. in the year 1977.

5. The said findings were reversed by the learned Sessions Judge on the ground that the learned Magistrate was in error in proceeding on the assumptions that the registration of the society was cancelled. The learned Judge also did not approve the approach of the learned Magistrate that the matter was old one.

6. I have heard learned counsel for the parties. It is not in dispute that civil suit was filed by the original complainant with respect to the management of the society which was registered as the Special Civil Suit No. 34/78 which came to be rejected by the judgement of the Court dated 26/2/93. The complainant preferred a Special Civil Application No. 2674/93 before this Court and the same was also rejected. The another suit preferred by the P.W.D. Employees Cooperative Society Ltd in the Court of the Civil Judge (S.D.) as a Special Suit lNo.17/78 was also dismissed, as withdrawn.

7. Having considered the entire material on record, I have no hesitation in saying that the entire dispute is of civil nature. The main allegations are against the accused No.3 - Himmatlal Jagjivandas Shah, who has expired. The original complainant - Mansukhlal Devjibhai Rathod has also expired. The learned Judge failed to consider that the society has gone into liquidation and the official liquidator was appointed as the Administrator. In my view, the learned Additional Sessions Judge has committed an error in upsetting the findings of the learned Magistrate without cogent reasons. Therefore, in my view, the impugned judgement of the learned Additional Sessions Judge is not

sustainable and deserves to be quashed and set aside.

8. In view of the aforesaid, this Criminal Revision Application is allowed. The impugned order dated 19th June 1996 passed by the Additional Sessions Judge, Bhavnagar in Criminal Revision Application No. 24/95 is quashed and set aside and the order passed in Criminal Case No. 3105/79 by the learned Magistrate dated 7/2/1995 is restored. Rule made absolute.

JANUARY 17, 1997 [N.N.MATHUR, J.]

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